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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SIGFREDO CABRERA, ENKO  
TELAHUN and CHRISTINE  
MCNEELY, as individuals, on behalf of  
themselves, and all other persons  
similarly situated.

### **Plaintiffs.**

V.

CVS RX SERVICES, INC., a New York corporation, CVS PHARMACY, INC., a Rhode Island corporation; GARFIELD BEACH CVS, LLC, a California limited liability company; and DOES 1 to 10 inclusive.

#### Defendants.

CASE NO.: 17-cv-05803-WHA

## **CLASS & REPRESENTATIVE ACTION**

**SECOND AMENDED COMPLAINT  
FOR DAMAGES, RESTITUTION,  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES:**

- (1) FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**  
(Labor Code §§ 204, 510, 558, 1194, 1197, 1197.1, and 1198);
  - (2) FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**  
(Labor Code §§ 226.7 and 512);
  - (3) FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS OR COMPENSATION IN LIEU THEREOF**  
(Labor Code § 226.7);
  - (4) FAILURE TO PAY WAGES OWED**  
(Labor Code §§ 201, 202, and 203);
  - (5) FAILURE TO FURNISH ACCURATE**

## **ITEMIZED WAGE STATEMENTS (Labor Code §§ 226 and 226.3);**

- (6) FAILURE TO MAINTAIN ACCURATE RECORDS**  
**(Labor Code §§ 226(a), 226.3, and 1174);**
  - (7) FAILURE TO REIMBURSE FOR NECESSARY WORK EXPENSES**  
**(Labor Code §§ 2800 and 2802);**
  - (8) UNFAIR BUSINESS PRACTICES**  
**(Bus. & Prof. Code §§ 17200 *et. seq.*);**
  - (9) PRIVATE ATTORNEYS GENERAL ACT OF 2004**  
**(Labor Code §§ 2698 *et seq.*).**

## **DEMAND FOR JURY TRIAL**

Plaintiffs Sigfredo Cabrera, Enko Telahun, and Christine McNeely (“Plaintiffs”), by and through their attorneys of record, bring this action on behalf of themselves and all persons similarly situated, against Defendants CVS Rx Services, Inc., CVS Pharmacy, Inc., and Garfield Beach CVS, LLC (collectively “Defendants” or “CVS”), on the following grounds:

## INTRODUCTION

1. This action is brought by Plaintiffs on behalf of themselves and all current or former employees of Defendants who held non-exempt hourly positions as pharmacists, pharmacy technicians, pharmacy managers, and pharmacy service associates (collectively “pharmacy employees”) who worked at CVS locations throughout the state of California, who were not properly compensated for all hours worked, who were not provided with legally compliant meal and rest periods, who were not paid all wages owed upon termination of the employment relationship, who were provided with inaccurate wage statements, who were not reimbursed for necessary work expenses, who were subject to Defendants’ unlawful, unfair, and

1 fraudulent business practices, and whose information was not properly maintained  
 2 by Defendants.

3       2. Plaintiffs seek damages, civil penalties, injunctive relief, and restitution,  
 4 as well as reasonable attorneys' fees and litigation costs, as provided under  
 5 California law.

6       3. All allegations in this Second Amended Complaint ("SAC") are based  
 7 upon information and belief, except those allegations that pertain to Plaintiffs named  
 8 herein and their counsel, which are based upon personal knowledge. Each allegation  
 9 in this SAC has evidentiary support or is likely to have evidentiary support after a  
 10 reasonable opportunity for further investigation and discovery.

#### **JURISDICTION AND VENUE**

12       4. This Court has jurisdiction over this action pursuant to California Code  
 13 of Civil Procedure ("Code Civ. Proc.") § 410.10. Pursuant to Code Civ. Proc. §  
 14 382, California Business and Professions Code ("Bus. & Prof. Code") § 17203, and  
 15 California Labor Code ("Labor Code") §§ 2698 *et seq.*, Plaintiffs bring this action  
 16 on behalf of themselves, and on behalf of all persons, as defined herein.

17       5. This Court has jurisdiction over this action pursuant to the Class Action  
 18 Fairness Act, codified as 28 U.S.C. § 1332(d). On October 9, 2017, Defendants  
 19 removed this action from the Alameda County Superior Court based on evidence  
 20 that the aggregate claims of the putative Class(es), exclusive of interests, costs, and  
 21 attorneys' fees, exceeds \$5 million.

22       6. Venue as to Defendants is proper in this judicial district, pursuant to 28  
 23 U.S.C. § 1391. Defendants transact business and maintain offices in Alameda  
 24 County and are otherwise within this Court's jurisdiction for purposes of service of  
 25 process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those  
 26 similarly situated within the county of Alameda and the state of California.

27       7. Pursuant to Rule 3.400 of the California Rules of Court this case shall  
 28 be deemed a complex action because it is filed as a class and representative action

1 and involves specialized case management, extensive discovery and evidence,  
 2 difficult and/or novel issues, and is likely to require extensive post judgment  
 3 supervision.

4 **CLASS DEFINITIONS**

5       8. The members of the proposed classes are defined as follows during the  
 6 period commencing on the date that is within four years prior to the filing of the  
 7 initial complaint and through the present date (hereinafter the “Class Period”). To  
 8 the extent that equitable tolling operates to toll the claims by the class and/or classes  
 9 against Defendants, the Class Period should be adjusted accordingly.

- 10           (a) All current or former non-exempt pharmacy employees employed  
                 by Defendants in the state of California who “opted-out” of or did  
                 not agree to CVS’ arbitration agreement and who suffered any  
                 violations of the Labor Code, Business and Professions Code  
                 and/or the relevant California Industrial Welfare Commission’s  
                 (“IWC”) Wage Orders during the Class Period.
- 11           (b) All current or former non-exempt pharmacy employees employed  
                 by Defendants in the state of California who “opted-out” of or did  
                 not agree to CVS’ arbitration agreement and who were not paid  
                 for all hours worked in violation of California law during the  
                 Class Period.
- 12           (c) All current or former non-exempt pharmacy employees employed  
                 by Defendants in the state of California who “opted-out” of or did  
                 not agree to CVS’ arbitration agreement and who were not  
                 provided with legally compliant meal periods or compensation in  
                 lieu thereof in violation of California law during the Class Period.
- 13           (d) All current or former non-exempt pharmacists employed by  
                 Defendants in the state of California who “opted-out” of or did  
                 not agree to CVS’ arbitration agreement and who were not

1 provided with legally compliant meal periods because of  
2 Defendants' practice of scheduling only one pharmacist on-duty  
3 for a period of four to six hours, or who were not compensated for  
4 noncompliant meal periods in lieu thereof in violation of  
5 California law during the Class Period.

- 6 (e) All current or former non-exempt pharmacy employees employed  
7 by Defendants in the state of California who "opted-out" of or did  
8 not agree to CVS' arbitration agreement and who were not  
9 provided with legally compliant rest periods or compensation in  
10 lieu thereof in violation of California law during the Class Period.  
11 (f) All current or former non-exempt pharmacists employed by  
12 Defendant in the state of California who "opted-out" of or did not  
13 agree to CVS' arbitration agreement and who were not provided  
14 with the opportunity to take legally compliant rest periods due to  
15 Defendants practice of scheduling one pharmacist on duty for a  
16 period of four to six hours, or who were not compensated for  
17 noncompliant rest periods in lieu thereof in violation of California  
18 law during the Class Period.  
19 (g) All former non-exempt pharmacy employees employed by  
20 Defendants in the state of California who "opted-out" of or did  
21 not agree to CVS' arbitration agreement and who were not paid  
22 all wages owed upon termination of the employment relationship  
23 in violation of California law during the Class Period.  
24 (h) All current or former non-exempt pharmacy employees employed  
25 by Defendants in the state of California who "opted-out" of or did  
26 not agree to CVS' arbitration agreement and who were not  
27 provided with accurate itemized wage statements in violation of  
28 California law during the Class Period.

- (i) All current or former non-exempt pharmacy employees employed by Defendants in the state of California who “opted-out” of or did not agree to CVS’ arbitration agreement and whose information was not accurately recorded and/or maintained in violation of California law during the Class Period.
  - (j) All current or former non-exempt pharmacy employees employed by Defendants in the state of California who “opted-out” of or did not agree to CVS’ arbitration agreement and who were not reimbursed for necessary work expenses in violation of California law during the Class Period.
  - (k) All current or former non-exempt pharmacy technicians employed by Defendants in the state of California who “opted-out” of or did not agree to CVS’ arbitration agreement and who were not reimbursed for their licensing, background check, and travel in violation of California law during the Class Period.
  - (l) All current or former non-exempt pharmacy employees employed by Defendants in the state of California who “opted-out” of or did not agree to CVS’ arbitration agreement and who were subject to Defendants’ unlawful, unfair, and/or fraudulent business practices in violation of California law during the Class Period.

9. Members of the class and/or classes are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

10. A more precise definition of the class and/or classes may be determined after further investigation and discovery is conducted.

11. Plaintiff McNeely reserves her right to redefine the class and/or classes under California Rules of Court, rule 3.765(b) and other applicable law at any time prior to the court's order on Plaintiff's Motion for Class Certification.

## THE PARTIES

## I. PLAINTIFFS

12. Plaintiff Sigfredo Cabrera, at all material times mentioned herein:

- (a) Was employed by CVS from January 2016 to January 2017 as a non-exempt pharmacy service associate and a non-exempt pharmacy technician;
  - (b) Worked at multiple CVS locations, including in Oakland, San Leandro and Palo Alto, California;
  - (c) Was paid an hourly wage;
  - (d) Was mandated by CVS to complete various training modules;
  - (e) Was not paid for all his time spent completing the required training modules;
  - (f) Was directed by CVS to work off the clock to meet the needs of the pharmacy and/or complete required training;
  - (g) Was not paid for all his time spent working off the clock;
  - (h) Was not provided with legally compliant meal periods or compensation in lieu thereof;
  - (i) Was not provided with legally compliant rest periods or compensation in lieu thereof;
  - (j) Was not paid all wages owed upon termination of the employment relationship;
  - (k) Was provided with inaccurate and incomplete wage statements;
  - (l) Was not reimbursed for necessary work expenses, including but not limited to the costs for his licensing and background check;
  - (m) Was subject to CVS' unlawful, unfair, and fraudulent business practices;
  - (n) Believes his payroll records are inaccurate and not properly maintained by Defendants;

- (o) Is an “aggrieved employee” as defined by Labor Code § 2699(c);
  - (p) Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

13. Plaintiff Enko Telahun, at all material times mentioned herein:

- (a) Was employed by CVS from June 2010 to February 2017 as a non-exempt pharmacist and a non-exempt pharmacy manager;
  - (b) Worked at a CVS location in San Diego, California;
  - (c) Was paid an hourly wage;
  - (d) Was required by CVS to complete various training modules;
  - (e) Was not paid for all time spent completing the various training modules;
  - (f) Was required to work off the clock to complete the required training and/or meet the needs of the pharmacy;
  - (g) Was not paid for all his time spent working off the clock;
  - (h) Was not provided with legally compliant meal periods or compensation in lieu thereof;
  - (i) Was not provided with legally complaint rest periods or compensation in lieu thereof;
  - (j) Was not paid all wages owed upon termination of the employment relationship;
  - (k) Was provided with inaccurate and incomplete wage statements;
  - (l) Was not reimbursed for necessary work expenses;
  - (m) Was subject to CVS' unlawful, unfair, and fraudulent business practices;
  - (n) Believes his payroll records are inaccurate and not properly maintained by Defendants;
  - (o) Is an “aggrieved employee” as defined by Labor Code § 2699(c);

(p) Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

14. Plaintiff Christine McNeely at all material times mentioned herein:

(a) Was employed by CVS from March 2014 to July 2016 as a non-exempt pharmacy technician;

(b) Worked at two CVS locations in Auburn and Grass Valley, California;

(c) Was paid an hourly wage;

(d) Was mandated by CVS to complete various training modules;

(e) Sent an opt-out letter to CVS indicating she did not wish to be bound by the arbitration agreement that she was forced agree to CVS' mandated training;

(f) Was not paid for all her time spent completing the required training modules;

(g) Was directed by CVS to work off the clock to  
pharmacy and/or complete required training;

- (h) Was not paid for all her time spent working off the clock;
- (i) Was not provided with legally compliant meal periods or

compensation in lieu thereof;

(j) Was not provided with legally compliant rest periods or

compensation in lieu thereof;

(k) Was not paid all wages owed upon termination of the em

relationship;  
(d) We will deal with issues related to the need to move to another country;

(c) We note in Fig. 1f that  $\alpha_1 = \alpha_2 = \alpha_3 = 1$  and  $\beta_1 = \beta_2 = \beta_3 = 1$ .

limited to the costs for her licensing and background check;

(ii) Was subject to CVS' unlawful, unfair, and fraudulent business practices;

- (o) Believes her payroll records are inaccurate and not properly maintained by Defendants;
  - (p) Is a member of the class and/or classes identified herein.

## II. DEFENDANTS

15. Defendant CVS Rx Services, Inc., is a New York corporation, which operates as a subsidiary of CVS Health Corporation that is engaged in the business of providing pharmacy services throughout the United States and the state of California.

16. Defendant CVS Pharmacy, Inc., is a Rhode Island corporation, which operates as a subsidiary of CVS Health Corporation that is engaged in the business of providing pharmacy services and operating retail stores that sell pharmaceuticals and general merchandise throughout the United States and the state of California.

17. Defendant Garfield Beach CVS, LLC, is a California limited liability company, which operates as a subsidiary of CVS Health Corporation that is engaged in the business of operating drug and proprietary stores throughout the state of California.

18. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiffs, who therefore sue these defendants by such fictitious names pursuant to Code Civ. Proc. § 474. Plaintiffs will amend their complaint to allege the true names and capacities of Does 1 through 10 when they are ascertained.

19. At all times mentioned herein, each defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter ego and/or in furtherance of the joint venture.

20. At all times mentioned herein, the acts and omissions of each of the defendants concurrently contributed to the various acts and omissions of each and every one of the other defendants in proximately causing the wrongful conduct,

1 harm, and damages alleged herein. Each of the defendants approved of, condoned,  
 2 and/or otherwise ratified each and every one of the acts or omissions complained  
 3 herein. Each defendant and all doe defendants were and are acting with the authority  
 4 of each and every other defendant and are acting as agents of each and every other  
 5 defendant or doe defendant.

6 **FACTUAL ALLEGATIONS**

7 21. Plaintiff Cabrera was employed by CVS from approximately January  
 8 2016 to January 2017. During his employment, he worked at CVS locations in  
 9 Oakland, San Leandro, and Palo Alto, California. Plaintiff Cabrera worked as both a  
 10 pharmacy service associate and a pharmacy technician and was paid an hourly wage.

11 22. Plaintiff Telahun was employed by CVS from about June 2010 to  
 12 February 2017. During his employment, he worked at a CVS location in San Diego,  
 13 California. Plaintiff Telahun worked as both a pharmacist and pharmacy manager  
 14 and was paid an hourly wage.

15 23. Plaintiff McNeely was employed by CVS around March 2014 to July  
 16 2016. During her employment, she worked as a pharmacy technician and was paid  
 17 an hourly wage.

18 24. Plaintiffs assert that CVS employs individuals as non-exempt  
 19 pharmacists, pharmacy managers, pharmacy technicians, and pharmacy service  
 20 associates at its various CVS locations throughout the state of California. To their  
 21 knowledge pharmacy employees are paid on an hourly basis.

22 25. Plaintiffs allege, based on information and belief, that all pharmacy  
 23 employees in the state of California are subject to the same and/or similar policies,  
 24 practices, and/or procedures described herein.

25 26. As a policy, practice, guideline and/or procedure CVS sets an amount of  
 26 available work hours for each CVS location based on prescription volume from the  
 27 previous year.

28

1       27. As a policy, practice, guideline, and/or procedure CVS instructs its store  
 2 managers and/or pharmacy managers not to go over the set amount of available  
 3 work hours for each CVS location.

4       28. Upon hire, CVS requires all pharmacy employees to complete an  
 5 extensive, initial training session. As a policy, practice, guideline, and/or procedure  
 6 CVS also requires pharmacy employees to complete ongoing training sessions,  
 7 which are offered about once a month. Plaintiffs understood that they and other  
 8 pharmacy employees were subject to discipline, including termination, if they did  
 9 not complete the mandated trainings. To Plaintiffs' knowledge these training  
 10 sessions are not essential for any state certification, licensing, or regulation.

11       29. As a policy, practice, guideline and/or procedure CVS routinely sends  
 12 notices via email to pharmacy employees when an upcoming training session is  
 13 required and available for completion. The notices provide information about the  
 14 upcoming training, a time estimate for completion, and a due date. CVS also sends  
 15 out reminder notices, as a policy, practice, guideline and/or procedure, to pharmacy  
 16 employees who have yet to complete the training by the upcoming due date.

17       30. Based on information and belief, Plaintiffs allege thereon, that failure to  
 18 complete the training in a timely fashion may result in disciplinary action, including  
 19 but not limited to a reduction in assigned work hours.

20       31. As a policy, practice, guideline and/or procedure CVS's training  
 21 modules are typically completed on a CVS web-based training system, usually  
 22 referred to as LEARNet. Plaintiffs believe that the web-based system keeps record  
 23 of all log-in and log-out times, as well as the total time the pharmacy employee  
 24 spends to complete each training module.

25       32. As a policy, practice, guideline and/or procedure CVS purportedly  
 26 permits pharmacy employees to complete their training while clocked in during a  
 27 scheduled shift. However, due to CVS's staffing policies, practices, and/or  
 28 procedures, and the busy nature of the pharmacy, Plaintiffs allege that they and

1 other pharmacy employees typically do not have time to complete the required  
 2 trainings during their scheduled shifts.

3       33. As a policy, practice, guideline and/or procedure to ensure that  
 4 pharmacy employees complete their training, CVS provides all pharmacy employees  
 5 with unique remote access log-in credentials so that they may access the web-based  
 6 training system from a remote location, such as the employee's home.

7       34. As a policy, practice, guideline and/or procedure CVS assigns an  
 8 approximate time frame that each training module should be completed in.  
 9 However, the trainings often take Plaintiffs and other pharmacy employees more  
 10 time to complete than the time prescribed.

11       35. Even though CVS knows or should know that training takes more time  
 12 than suggested, it has a policy, procedure, guideline and/or practice of instructing  
 13 store managers to only compensate pharmacy employees for the allocated training  
 14 time instead of the actual time the pharmacy employees spend completing the  
 15 training.

16       36. As a policy, procedure, guideline and/or practice CVS typically uses its  
 17 cash registers to operate as the CVS timekeeping system. Based on information and  
 18 belief Plaintiffs allege thereon, that CVS training system is not integrated with the  
 19 timekeeping system. CVS does not keep track of training time nor does CVS  
 20 automatically add the training time to the pharmacy employees' clocked hours at  
 21 their work locations. As a result, all training completed off the clock must be  
 22 entered manually by a store manager, despite the fact that log-in and log-out times  
 23 are available to CVS through the training software.

24       37. As a policy, procedure, guideline and/or practice, CVS instructs  
 25 pharmacy employees to separately track their time spent engaging in training on a  
 26 separate sheet of paper that allegedly is to be manually entered by a store manager.  
 27 However, pharmacy employees often endure difficulties with management when  
 28 reporting their training time due to the direction and pressure by CVS to minimize

1 labor costs and restrict overtime. CVS's scheme has created a disincentive for store  
 2 managers to manually enter the actual time pharmacy employees spent completing  
 3 the training remotely. Ultimately, this scheme has knowingly deterred pharmacy  
 4 employees from reporting their actual time spent participating in training. Therefore  
 5 much, if not all, of the time pharmacy employees spend remotely completing the  
 6 required training is never logged by CVS and the employees are not paid for that  
 7 time.

8       38. CVS is aware and/or should be aware of their failure to compensate  
 9 pharmacy employees because they have payroll records for all pharmacy employees,  
 10 as well as training records for all pharmacy employees. From such records, CVS has  
 11 the capability to determine whether or not a pharmacy employee is appropriately  
 12 compensated for their time spent participating in the mandated training.

13       39. As a policy, procedure, guideline, and/or practice CVS also used its  
 14 training program to mandate pharmacy employees to participate in a training module  
 15 entitled "Arbitration of Workplace Legal Disputes" wherein the pharmacy employee  
 16 could not complete the training without agreeing to arbitrate his or her legal claims.  
 17 Instead the training quickly informed individuals that they had the "limited  
 18 opportunity" to "opt-out" by mailing a written notice to CVS indicating that they  
 19 wished to "opt-out" of the policy.

20       40. Plaintiffs McNeely and Telahun were subject to the training module  
 21 described above. Plaintiffs allege that they were threatened by management to  
 22 complete the training thereby making them subject to the agreement.

23       41. Shortly after completing the "Arbitration of Workplace Legal Disputes"  
 24 training module, Plaintiff McNeely and a few other pharmacy employees sent  
 25 written letters to CVS headquarters stating that they did not wish to be bound by the  
 26 arbitration agreement. Plaintiff McNeely further believes that a copy of such letter  
 27 is included in her personnel file as the pharmacist in charge at the time told her that  
 28 a copy of the letter was in her file.

1       42. Based on information and belief, Plaintiffs assert that CVS provides an  
2 arbitration agreement to pharmacy employees upon hire to which some pharmacy  
3 employees have elected not to sign.

4       43. Plaintiffs further allege that due CVS's policy, practice, guideline  
5 and/or procedure of strictly allocating work hours based on prescription volume  
6 from the previous year and the busy nature of the pharmacy, they and other  
7 pharmacy employees were often directed to work off the clock before and after their  
8 scheduled shifts, as well as during their meal and rest periods to meet the needs of  
9 the pharmacy and/or to complete the required training. As a result, pharmacy  
10 employees often worked more than eight hours in a day, and/or forty hours in a  
11 week.

12       44. Plaintiffs allege that it is CVS's policy, practice, guideline and/or  
13 procedure to discipline pharmacy employees for refusing to work off the clock, such  
14 as by reducing the employee's scheduled work hours.

15       45. CVS's policies, practices, and/or procedures have knowingly resulted in  
16 pharmacy employees not being compensated for some or all the time they were  
17 engaged in work.

18       46. Plaintiffs further allege that as a policy, practice, guideline and/or  
19 procedure CVS required pharmacy employees to clock out for meal periods, even  
20 though pharmacy employees were working through their meal periods to meet the  
21 needs of the pharmacy and/or complete their required training(s).

22       47. Plaintiffs contends that CVS knew or should have known that pharmacy  
23 employees were working through their meal periods because (a) various managers,  
24 supervisors, and personnel saw pharmacy employees working during their meal  
25 periods, (b) LEARNet shows that pharmacy employees were completing trainings,  
26 while they were clocked out for a meal period; (c) the work accomplished could not  
27 have been completed within the documented number of hours, and (d) Plaintiff

1 Cabrera personally complained to his superiors about not receiving adequate meal  
 2 and rest periods.

3       48. California regulations provide that a pharmacist must be on the premises  
 4 at all times and be fully aware of all activities performed by a pharmacy technician.  
 5 Plaintiff Telahun contends that as a policy, practice, guideline and/or procedure  
 6 CVS schedules only one pharmacist on duty for a period of four to six hours. Due  
 7 to this scheduling practice, pharmacists, such as Plaintiff Telahun, were not  
 8 provided with meal periods that were free of all duty, as they were on call during  
 9 their meal periods and/or were unable to leave the premises. As such, Plaintiff  
 10 Telahun and other current or former pharmacists were not provided with legally  
 11 compliant meal periods.

12       49. Plaintiffs further allege that they and other current or former pharmacy  
 13 employees did not receive a second meal period when they worked more than ten  
 14 hours. This was largely because Plaintiffs and other pharmacy employees were  
 15 working off the clock as described herein.

16       50. Plaintiffs and other current or former pharmacy employees were not  
 17 compensated for noncompliant meal periods as provided by California law.

18       51. As a policy, practice, guideline and/or procedure CVS did not provide  
 19 Plaintiffs and other current or former employees with lawful rest periods, despite its  
 20 written policy due to the busy nature of the pharmacy and the pressure of CVS to  
 21 meet its goals.

22       52. Due to CVS's policy, practice, guideline and/or procedure of only  
 23 scheduling one pharmacist for a period of four to six hours and California  
 24 regulations, pharmacists, such as Plaintiff Telahun were unable to take off-duty rest  
 25 periods as they were expected to be on-call and available at all times.

26       53. Plaintiffs and other current or former employees were not compensated  
 27 for noncompliant rest periods in violation of California law.

1       54. CVS also has a policy, practice, guideline and/or procedure of failing to  
2 reimburse and/or indemnify Plaintiffs and other current or former pharmacy  
3 employees for expenses incurred as a direct result of their employment, such as the  
4 use of personal computers and internet to complete the mandatory training from a  
5 remote location, even though CVS knew and/or had reason to know that pharmacy  
6 employees were completing the training from their personal computers and using  
7 their own internet without reimbursement.

8       55. Additionally, CVS has a policy, practice, guideline and/or procedure of  
9 failing to reimburse and/or indemnify Plaintiff Cabrera and other current or former  
10 pharmacy technicians for the costs of their required license, background check, and  
11 travel, which were required by CVS. Thus, CVS knew or had reason to know that  
12 pharmacy technicians were not being reimbursed for their required work-related  
13 expenses.

14       56. Since, CVS failed to pay Plaintiffs and other current or former  
15 employees for all time worked, as well as premiums for noncompliant meal and rest  
16 periods, CVS willfully failed to pay, in a timely manner, all wages owed to  
17 Plaintiffs and other former employees upon termination of their employment.

18       57. Due to CVS's policies, practices, and procedures described herein, CVS  
19 failed to provide accurate itemized wage statements to Plaintiffs and other current or  
20 former pharmacy employees in violation of California law because the wage  
21 statements did not properly reflect the number of hours worked, the gross wages and  
22 net wages earned, nor was the information properly itemized in a manner pharmacy  
23 employees can easily determine the information.

24       58. Because of CVS' policies, practices, and procedures, described herein,  
25 CVS also failed to maintain accurate records by failing to accurately and properly  
26 record all time worked and maintain accurate payroll records as required by  
27 California law.

28

1       59. On June 22, 2016, Plaintiff Cabrera submitted notice to the LWDA and  
2 CVS informing them of CVS' alleged Labor Code violations pursuant to PAGA. A  
3 true and correct copy of the notice is attached hereto as **Exhibit 1** and is  
4 incorporated herein by this reference. On August 22, 2017, Plaintiffs Cabrera and  
5 Telaun submitted an amended notice to the LWDA, which included Mr. Telahun as  
6 an additional representative and included additional facts and theories to support the  
7 alleged Labor Code violations, to the LWDA. A true and correct copy of the  
8 amended notice is attached hereto as **Exhibit 2** and is incorporated herein by this  
9 reference. As of the date of this pleading the LWDA has yet to respond to either  
10 notice. As such, Plaintiffs Cabrera and Telahun now file this representative action  
11 in their representative capacity pursuant to Labor Code §§ 2698 *et seq.*

12       60. Plaintiffs believe that other violations may be discovered and therefore  
13 reserve their right to allege additional violations of law that may constitute  
14 violations of the Business and Professions Code and/or Labor Code, as investigation  
15 and discovery warrants. In the event Plaintiffs discover other violations through the  
16 discovery process, Plaintiffs will seek to amend the operative complaint.

## **CLASS ALLEGATIONS**

18       61. Plaintiff Christine McNeely brings this action on behalf of herself and  
19 on behalf of all persons within the defined class and/or classes included herein.

20        62. This class action meets the statutory prerequisites for the maintenance  
21 of a class action, as set forth in Code Civ. Proc. § 382, Civ. Code § 1781 and the  
22 Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), Rule 23, in that:

1 will apply uniformly to every member of the Class, and as a practical  
2 matter be dispositive of the interests of the other members not party  
3 to the adjudication;

- 4 (c) The parties opposing the Class have acted or have refused to act on  
5 grounds generally applicable to the Class, thereby making final  
6 injunctive relief or corresponding declaratory relief appropriate with  
7 respect to the Class as a whole; and  
8 (d) Common questions of law and fact exist as to the members of the  
9 Class and predominate over any questions affecting only individual  
10 members, and a class action is superior to other available methods  
11 for the fair and efficient adjudication of the controversy, including  
12 consideration of:  
13 i. The interests of Class Members in individually controlling the  
14 prosecution or defense of separate actions;  
15 ii. The extent and nature of any litigation concerning the  
16 controversy already commenced by or against members of the  
17 Class;  
18 iii. The desirability or undesirability of concentrating the litigation  
19 of the claims in this particular forum; and  
20 iv. The difficulties likely to be encountered in the management of a  
21 class action.

22 63. The Court should permit this action to be maintained as a class action  
23 pursuant to Code Civ. Proc. § 382, Civ. Code § 1781, and Fed. R. Civ. P. 23  
24 because:

- 25 (a) Questions of law and fact common to the Class are substantially  
26 similar and predominate over any questions affecting only individual  
27 members;

- (b) A class action is superior to any other available method for the fair and efficient adjudication of Class Members' claims;
  - (c) The members of the Class are so numerous that it is impractical to bring all Class Members before the Court;
  - (d) Plaintiffs' claims are typical of the claims of the Class;
  - (e) Plaintiffs and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
  - (f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the Class;
  - (g) Plaintiffs can, and will, fairly and adequately protect the interest of the Class;
  - (h) There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the Class for the injuries sustained; and
  - (i) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

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## **CAUSES OF ACTION**

## **FIRST CAUSE OF ACTION**

**(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

# **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**

**[Labor Code §§ 204, 510, 558, 1194, and 1197, 1197.1, and 1198]**

8       64. Plaintiff McNeely realleges and incorporate by this reference, all  
9 paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017,  
10 and the Complaint filed on August 3, 2017.

11       65. Plaintiff McNeely alleges that CVS willfully and intentionally violated  
12 the Labor Code by failing to adequately compensate her and other current or former  
13 pharmacy employees for all hours worked.

14       66. Labor Code § 204 establishes the fundamental right of all employees in  
15 the state of California to be paid wages in a timely fashion for their work.

16       67. Section 1197 of the Labor Code provides, “[t]he minimum wage for  
17 employees fixed by the commission is the minimum wage to be paid to employees,  
18 and the payment of a lower wage than the minimum so fixed is unlawful.”

19       68. Pursuant to California law, an employer must pay each employee "not  
20 less than the applicable minimum wage for all hours worked in the payroll period,  
21 whether the compensation is measured by time, piece, commission, or otherwise."

<sup>22</sup> *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44.

23 ||| 69. Labor Code § 510(a) provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweeks shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay. Nothing in this section

1           requires an employer to combine more than one rate of  
 2           overtime compensation in order to calculate the amount to be  
 3           paid to an employee for any hour of overtime work.  
 4           (Emphasis added.)

5           70. An employee may not waive his or her right to overtime compensation  
 6           and any agreement by the employee to accept less than the statutorily required rate  
 7           is unenforceable as a matter of law. *Early v. Superior Court* (2000) 79 Cal.App.4th  
 8           1420, 1430.

9           71. Labor Code § 1194(a) states:

10           Notwithstanding any agreement to work for a lesser wage,  
 11           any employee receiving less than the legal minimum wage or  
 12           the legal overtime compensation applicable to the employee  
 13           is entitled to recover in a civil action the unpaid balance of  
 14           the full amount of this minimum wage or overtime  
 15           compensation, including interest thereon, reasonable  
 16           attorney's fees, and costs of suit.

17           72. Labor Code § 558(a) further provides:

18           Any employer or other person acting on behalf of an  
 19           employer who violates, or causes to be violated, a section of  
 20           this chapter or any provision regulating hours and days of  
 21           work in any order of the Industrial Welfare Commission  
 22           shall be subject to a civil penalty as follows:

- 23           (1)For any initial violation, fifty dollars (\$50) for each  
 24           underpaid employee for each pay period for which  
 25           the employee was underpaid in addition to an amount  
 26           sufficient to recover unpaid wages.
- 27           (2)For each subsequent violation, one hundred dollars  
 28           (\$100) for each underpaid employee for each pay  
 29           period for which the employee was underpaid in  
 30           addition to an amount sufficient to recover underpaid  
 31           wages.
- 32           (3)Wages recovered pursuant to this section shall be  
 33           paid to the affected employee.

34           73. As a policy, practice, guideline and/or procedure CVS requires all  
 35           pharmacy employees to participate in regular training. CVS allegedly permits  
 36           pharmacy employees to complete their training during scheduled shifts or from a  
 37           remote location by using provided log-in credentials. However, when training is  
 38           completed off-the-clock, the pharmacy employee's time is not automatically

1 recorded. CVS management must manually enter any training time completed off-  
 2 the-clock.

3       74.     CVS has a policy, practice, guideline and/or procedure of instructing  
 4 and/or requiring store managers to only compensate pharmacy employees for the  
 5 estimated time for completion of training instead of the actual time spent completing  
 6 the training. Since, CVS requires store managers to limit their labor costs, CVS's  
 7 policies, practices, and/or procedures serve as a disincentive for store managers to  
 8 properly compensate pharmacy employees for their training time. As a result,  
 9 pharmacy employees are not compensated the legal minimum wage for all or some  
 10 of the training time that occurs off-the-clock, and/or at the applicable rate of  
 11 overtime.

12       75.     As described herein, CVS has a policy, practice, guideline and/or  
 13 procedure of limiting the number of available work hours, based on performance  
 14 from the prior year. CVS instructs its store managers to not go over the set amount  
 15 of available work hours. As a result, pharmacy employees were often instructed and  
 16 expected to work off the clock before and after their scheduled shifts, or during their  
 17 meal and/or rest periods to meet the needs of the pharmacy. If a pharmacy employee  
 18 refused to work off the clock, the pharmacy employee was often disciplined by  
 19 having his or her hours cut.

20       76.     CVS has intentionally created a common scheme and practice to deter  
 21 pharmacy employees from reporting and being paid for all hours worked.

22       77.     At all relevant times, Plaintiff McNeely and other current or former  
 23 pharmacy employees worked more than eight hours in a single workday and/or more  
 24 than forty hours in a workweek due CVS's mandatory training requirements and  
 25 limited staffing practice. CVS knowingly failed to compensate pharmacy employees  
 26 for all hours worked, and/or the applicable overtime in violation of the Labor Code.

27       78.     By virtue of CVS's unlawful failure to compensate Plaintiff McNeely  
 28 and current or former pharmacy employees for their time worked, pharmacy

1 employees have suffered, and will continue to suffer, damages in amounts which are  
2 presently unknown to them, but which exceed the jurisdictional limits of this Court  
3 and which will be ascertained according to proof at trial.

4       79. Having received less than the legal minimum wage and/or applicable  
5 rate of overtime compensation, Plaintiff McNeely and other current or former  
6 pharmacy employees are entitled to, and now seek to recover all wages owed,  
7 penalties, including penalties available under Labor Code § 558, as well as interest,  
8 reasonable attorneys' fees and costs pursuant to Labor Code § 1194.

9       80. Plaintiff McNeely, on behalf of herself and other current or former  
10 pharmacy employees, also requests further relief as described in the below prayer.

## **SECOND CAUSE OF ACTION**

**(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS  
OR COMPENSATION IN LIEU THEREOF**

## **[Labor Code §§ 226.7 and 512]**

17       81. Plaintiff McNeely realleges and incorporate by this reference, all  
18 paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017,  
19 and Complaint filed on August 3, 2017.

20 82. Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

1       83. In pertinent part, Labor Code § 226.7(c) provides:

2           If an employer fails to provide an employee a meal or rest or  
 3           recovery period in accordance with a state law, including but  
 4           not limited to, an applicable statute or applicable regulation,  
 5           standard, or order of the Industrial Welfare Commission, the  
 6           Occupational Safety and Health Standards Board, or the  
 7           Division of Occupational Safety and Health, the employer  
 8           shall pay the employee one additional hour of pay at the  
 9           employee's regular rate of compensation for workday that  
 10          the meal or rest or recovery period is not provided.

11       84. Under California law, the meal period requirement is generally satisfied  
 12       if the employee: (a) has at least 30 minutes uninterrupted; (b) is free to leave the  
 13       premises; and (c) is relieved of all duty for the entire period. *See Brinker Restaurant*  
*Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036 [citing DLSE Opn. Letter No.  
 14       1996.07.12 (July 12, 1996) p.1].

15       85. At all relevant times, Plaintiff McNeely and other current or former  
 16       pharmacy employees were typically scheduled to work an eight-hour day.

17       86. Plaintiff McNeely alleges that she and other current or former pharmacy  
 18       employees typically did not receive legally compliant meal periods.

19       87. Plaintiff McNeely alleges that she and other current or former  
 20       employees were directed to work through their meal periods to meet the needs of the  
 21       pharmacy.

22       88. Meal periods that are not free from all duty and/or are less than thirty  
 23       (30) minutes violate California law.

24       89. Plaintiff McNeely believes CVS knew or should have known that she  
 25       and other current or former pharmacy employees were not receiving legally  
 26       compliant meal periods because (a) various managers, supervisors, and personal saw  
 27       pharmacy employees working during their meal periods; (b) LEARNet showed that  
 28       pharmacy employees were completing training while they were clocked out for  
 lunch, (c) the work accomplished could not have been completed in the number of

1 documented hours; and (d) Plaintiff McNeely complained to her superiors about not  
 2 receiving legally compliant meal periods.

3       90.     Additionally, due to California regulations which require a pharmacist  
 4 to be on the premises at all times and CVS's policy, practice, guideline and/or  
 5 procedure of only scheduling one pharmacist on duty for a period of four to six hours,  
 6 often times pharmacists, were not provided with the opportunity to take a duty-free  
 7 meal period, as they were often on call and/or unable to leave the premises. As such,  
 8 pharmacists were not provided with legally compliant meal periods.

9       91.     Plaintiff McNeely further alleges that she and other current or former  
 10 pharmacy employees did not receive a second meal period when they worked more  
 11 than ten hours. Plaintiff McNeely contends that this largely resulted when pharmacy  
 12 employees worked off the clock, as described herein.

13       92.     CVS failed to pay Plaintiff McNeely and other current or former  
 14 pharmacy employees the required premium wage for each noncompliant meal  
 15 period, as required by California law.

16       93.     Due to CVS's unlawful conduct, Plaintiff McNeely and other current or  
 17 former pharmacy employees suffered, and will continue to suffer, damages in an  
 18 amount which is presently unknown, but which exceeds the jurisdictional limits of  
 19 this Court and which will be ascertained according to proof at trial.

20       94.     Pursuant to Labor Code § 226.7(c) and the relevant IWC Wage Orders,  
 21 Plaintiff McNeely and other current or former pharmacy employees are entitled to,  
 22 and seek to, recover the full amount of unpaid premium wages for noncompliant  
 23 meal periods.

24       95.     Pursuant to Labor Code § 218.6, Plaintiff McNeely and other current or  
 25 former pharmacy employees are entitled to, and seek to, also recover prejudgment  
 26 interest on the amount of premium wages owed.

27

28

96. Plaintiff McNeely and other current or former pharmacy employees are entitled to, and seek to, recover reasonable attorneys' fees as permitted by Labor Code § 218.5.

97. Plaintiff McNeely, on behalf of herself and other current or former pharmacy employees, requests further relief as described in the below prayer.

## **THIRD CAUSE OF ACTION**

**(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

# **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS OR COMPENSATION IN LIEU THEREOF**

## [Labor Code § 226.7]

98. Plaintiff McNeely realleges and incorporate by this reference, all paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017, and Complaint filed on August 3, 2017.

99. In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Divisor of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

100. At all relevant times, Plaintiff McNeely and other current or former  
pharmacy employees were typically scheduled to work an eight-hour work day.

101. Plaintiff McNeely alleges that she and other current or former pharmacy employees regularly did not receive off-duty rest periods despite CVS's written

1 policy because of busy nature of the pharmacy and the pressure by CVS to meet the  
2 stores goals.

3 102. Additionally, pharmacists were also unable to take off-duty rest periods  
4 due to CVS's policy of only scheduling one pharmacist on duty for a period of four  
5 to six hours and California regulations, which require a pharmacist to always be on  
6 the premises.

7 103. CVS did not compensate Plaintiff McNeely and other current or former  
8 pharmacy employees the required premium wage for each noncompliant rest period,  
9 as required by California law.

10 104. Plaintiff McNeely asserts that CVS knew or should have known that she  
11 and other current or former pharmacy employees were not receiving adequate rest  
12 periods due to the busy nature of the pharmacy, production, and staffing.

13 105. As a result of CVS's unlawful conduct, Plaintiff McNeely and other  
14 current or former pharmacy employees suffered, and will continue to suffer,  
15 damages in an amount which is presently unknown, but which exceeds the  
16 jurisdictional limits of this Court and which will be ascertained according to proof at  
17 trial.

18 106. According to Labor Code § 226.7(c) and the relevant IWC wage orders,  
19 Plaintiff McNeely and other current or former pharmacy employees are entitled to,  
20 and seek to, recover the full amount of unpaid premium wages for noncompliant rest  
21 periods.

22 107. Pursuant to Labor Code § 218.6, Plaintiff McNeely and other current or  
23 former pharmacy employees are entitled to, and seek to, also recover prejudgment  
24 interest on the amount of premium wages owed.

25 108. Plaintiff McNeely and other current or former pharmacy employees are  
26 entitled to, and seek to, recover reasonable attorneys' fees and costs as permitted by  
27 Labor Code § 218.5.

28

109. Plaintiff McNeely, on behalf of herself and other current or former  
pharmacy employees, requests further relief as described in the prayer below.

## **FOURTH CAUSE OF ACTION**

**(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

# **FAILURE TO PAY WAGES OWED**

## **[Labor Code §§ 201, 202, and 203]**

110. Plaintiff McNeely realleges and incorporate by this reference all paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017, and the Complaint filed on August 3, 2017.

111. The term “wages” is defined in Labor Code § 200(a) to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time...or other method of calculation. Subsection (b) further defines “labor” to include all “labor, work or service whether rendered or performed under contract, subcontract, partnership...”

112. Labor Code § 201(a) provides: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

113. According to Labor Code § 202(a):

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of mailing shall constitute the date of payment for purposes of the requirement to provide payment with 72 hours of the notice of quitting.

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114. Labor Code § 203 further provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

115. CVS's common scheme of limiting work hours and mandating training, knowingly prevented pharmacy employees from being compensated for all time worked.

116. A number of pharmacy employees, including Plaintiff McNeely, are no longer employed by CVS. To date, CVS has yet to pay the wages owed to them as required under California law.

117. As a consequence of CVS's willful and deliberate refusal to tender such wages, affected pharmacy employees are entitled to, and therefore seek a maximum of 30 days' wages at their daily rate of pay as a waiting time penalty. *See* Labor Code § 203.

118. Plaintiff McNeely, on behalf of herself and other pharmacy employees, also request further relief as described in the below prayer.

## **FIFTH CAUSE OF ACTION**

**(By Plaintiff McNeelys Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

## **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

## **[Labor Code §§ 226 and 226.3]**

119. Plaintiff McNeely realleges and incorporate by this reference, all paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017, and the Complaint filed on August 3, 2017.

111

1       120. Labor Code § 226 states in pertinent part:

2                  Every employer shall, semimonthly or at the time of each  
 3 payment of wages, furnish each of his or her employees,  
 4 either as detachable part of the check, draft, or voucher  
 5 paying the employee's wages, or separately when wages are  
 6 paid by personal check or cash, an accurate itemized  
 7 statement in writing showing (1) gross wages earned, (2)  
 8 total hours worked by the employee... (4) all deductions...  
 (5) net wages earned, (6) the inclusive dates of the period for  
 which the employee is paid... (8) the name and address of  
 the legal entity that is the employer, and (9) all applicable  
 hourly rates in effect during each period and the  
 corresponding number of hours worked at each hourly rate  
 by the employee..."

9       121. Labor Code § 226(e)(1) further provides:

10                  An employee suffering injury as a result of knowing and  
 11 intentional failure by an employer to comply with  
 12 subdivision (a) is entitled to recover the greater of all actual  
 13 damages or fifty dollars (\$50) for the initial pay period in  
 14 which a violation occurs and one hundred dollars (\$100) per  
 15 employee for each violation in a subsequent pay period, not  
 to exceed an aggregate penalty of four thousand (\$4,000),  
 and is entitled to an award of costs and reasonable attorneys'  
 fees.

16       122. Labor Code § 266(h) states "an employee may also bring an action for  
 17 injunctive relief to ensure compliance with this section and is entitled to an award of  
 18 costs and reasonable attorneys' fees."

19       123. An injury occurs where the employer fails to provide accurate  
 20 information and the employee cannot "promptly and easily determine" the total  
 21 number of hours worked or the "applicable hourly rates in effect during the pay  
 22 period and the corresponding number of hours worked at each hourly rate." Labor  
 23 Code § 226(a)(9)-(e)(2)(B)(i).

24       124. Labor Code § 226(e)(2)(c) explains that the phrase "promptly and easily  
 25 determine" means that "a reasonable person would be able to readily ascertain the  
 26 information without reference to documents or information."

27       125. CVS's policies, practices, and procedures related to training, staffing,  
 28 and payroll records has resulted in wage statements which do not accurately reflect

1 the gross and/or net wages earned since, CVS has not paid pharmacy employees for  
 2 all time worked. Additionally, the wage statements and subsequent records do not  
 3 accurately reflect all time worked, since off the clock time was not properly tracked  
 4 and/or entered into the payroll system. Thus, the total hours worked listed on the  
 5 wage statements are inaccurate. The wage statements also do not properly reflect  
 6 premium payments received for noncompliant meal and rest periods. As a result,  
 7 Plaintiff McNeely and other current or former pharmacy employees were unable to  
 8 readily ascertain from their wage statements whether they were properly  
 9 compensated.

10       126. Pursuant to California law, Plaintiff McNeely and other current or  
 11 former pharmacy employees are deemed to have suffered injury as a result of CVS's  
 12 knowing and intentional failure to provide them with accurate itemized wage  
 13 statements.

14       127. According to Labor Code § 226(e), Plaintiff McNeely and other current  
 15 or former pharmacy employees are entitled to and seek to recover liquidated  
 16 damages in the amount of \$50.00 for the initial violation and \$100.00 for each  
 17 subsequent violation per employee, not to exceed \$4,000.00.

18       128. Additionally, pursuant to Labor Code § 226(h), Plaintiff McNeely and  
 19 other current or former pharmacy employees are entitled to, and therefore seek,  
 20 injunctive relief in order to ensure that CVS complies with Labor Code § 266.

21       129. Plaintiff McNeely and other current or former pharmacy employees are  
 22 entitled to, and seek, attorneys' fees and costs provided by Labor Code § 266(h).

23       130. Plaintiff McNeely, on behalf of herself and other current or former  
 24 pharmacy employees, also request further relief as described in the below prayer.

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## SIXTH CAUSE OF ACTION

**(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

# **FAILURE TO MAINTAIN ACCURATE RECORDS**

**[Labor Code §§ 226(a), 226.3, and 1174]**

131. Plaintiff McNeely realleges and incorporates by this reference, all paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017, and the Complaint filed on August 3, 2017.

132. In pertinent part Labor Code § 226(a) states “a copy of the statement and the record of deductions shall be kept on file by the employer for at least three years...”

133. Labor Code § 1174(d) states:

"[e]very person employing labor in this state shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

134. Plaintiff McNeely alleges that CVS intentionally and willfully failed to maintain accurate payroll records showing the number of hours worked each day by Plaintiffs and other current or former pharmacy employees, including the time spent engaged in training and working off the clock, because CVS knew or should have known that pharmacy employees were working off the clock as described herein.

135. As a result of CVS's deliberate and unlawful conduct, Plaintiff McNeely and other current or former pharmacy employees suffered, and continue to suffer, injuries and damages, because CVS has failed to abide by the requirements outlined in the Labor Code.

136. More specifically, Plaintiff McNeely and other current or former  
pharmacy employees have been injured because they were denied both their legal  
right and protected interest, in having accurate and complete payroll records  
available to them.

137. Plaintiff McNeely and other current or former pharmacy employees are entitled to and do seek the damages outlined in Labor Code § 226.7(e)(1).

138. Plaintiff McNeely, on behalf of themselves and other current or former  
pharmacy employees, also request further relief as described in the below prayer.

## **SEVENTH CAUSE OF ACTION**

**(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
Defendants and Does 1-10)**

## **FAILURE TO REIMBURSE FOR NECESSARY WORK EXPENSES**

## [Labor Code §§ 2800 and 2802]

139. Plaintiff McNeely realleges and incorporate by this reference, all paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017, and the Complaint filed on August 3, 2017.

140. Pursuant to Labor Code §§ 2800 and 2802, an employer must reimburse employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

141. Plaintiff McNeely and other current and former pharmacy employees incurred necessary business-related expenses and costs, such as use of a personal computer or device, use of internet, licensing, background check, and travel.

142. CVS has intentionally and willfully failed to reimburse Plaintiff McNeely and other current or former pharmacy employees for all necessary business-related expenses and costs, even though CVS knew or had reason to know

1 that employees were using their personal computers/devices and internet for work  
 2 related activities.

3       143. CVS also knew or had reason to know that pharmacy technicians were  
 4 paying for the cost of their license, background checks, and travel, because they  
 5 were requirements imposed by CVS.

6       144. Plaintiff McNeely and other current or former pharmacy employees are  
 7 entitled to recover, and therefore seek to recover, from CVS, their business-related  
 8 expenses and costs incurred during the course and scope of their employment, in  
 9 addition to interest accrued from the date on which the employee incurred the  
 10 necessary expenditures at the same rate as judgments in civil actions in the state of  
 11 California.

12       145. Plaintiff McNeely, on behalf of themselves and other current or former  
 13 pharmacy employees, also requests further relief as described in the below prayer.

#### **EIGHTH CAUSE OF ACTION**

15       **(By Plaintiff McNeely Individually and on Behalf of the Class(es) against  
 16 Defendants and Does 1-10)**

#### **UNFAIR BUSINESS PRACTICES**

18       **[Bus. & Prof. Code §§ 17200 *et seq.*]**

19       146. Plaintiff McNeely realleges and incorporate by this reference, all  
 20 paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017,  
 21 and the Complaint filed on August 7, 2017.

22       147. As codified in Bus. & Prof. Code §§ 17200 *et seq.*, California's Unfair  
 23 Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent  
 24 business act or practice."

25       148. The UCL permits a cause of action to be brought if a practice violates  
 26 some other law. In effect, the "unlawful" prong of the UCL makes a violation of the  
 27 underlying law a per se violation of Bus. & Prof. Code § 17200. *Cel-Tech  
 28 Commc'nns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.

1 Virtually any law or regulation – federal or state, statutory, or common law – can  
 2 serve as a predicate for a § 17200 “unlawful” violation. *Farmers Ins. Exch. v.*  
 3 *Superior Court* (1992) 2 Cal.4th 377, 383.

4       149. Under the UCL, a practice may be “unfair” even if some other law does  
 5 not specifically proscribe it. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20  
 6 Cal.4th 1134, 1143 [internal citations omitted]. Pursuant to the California Supreme  
 7 Court, the “unfair” standard is intentionally broad to allow courts maximum  
 8 discretion in prohibiting new schemes to defraud. *Cel-Tech Commc’ns, Inc., supra,*  
 9 20 Cal.4th at 180-181.

10       150. A business act or practice is deemed “fraudulent” under Bus. & Prof.  
 11 Code § 17200 where “members of the public are likely to be deceived.” *Blakemore*  
 12 *v. Superior Court*, (2005) 129 Cal.App.4th 36, 49. A showing of actual deception,  
 13 reasonable reliance, or damages is not required. *Id.* The fraudulent prong may be  
 14 used to attack the deceptive manner in which otherwise lawful contract terms are  
 15 presented to an individual. *Boschma v. Home Loan Ctr., Inc.* (2011) 198  
 16 Cal.App.4th 230, 253. As such, even a true statement may be unlawful under §  
 17 17200 if it is “couched in such a manner that is likely to mislead or deceive..., such  
 18 as by failing to disclose other relevant information.” *Id.*

19       151. As discussed herein, CVS’s business practices violate all three prongs  
 20 of California’s UCL.

### 21                                  Unlawful

22       152. As described herein, CVS violated the Labor Code by refusing to  
 23 properly compensate pharmacy employees for all time worked. Failure to  
 24 compensate pharmacy employees for all time worked is a clear violation of  
 25 California law, and thus a per se violation of the UCL. *Cel-Tech Commc’ns, Inc.,*  
 26 *supra*, 20 Cal.4th at 180. Additionally, CVS failed to compensate pharmacy  
 27 employees for non-compliant meal and rest periods as provided by California law.  
 28 CVS’s failure to promptly pay wages owed upon termination, failure to furnish

1 accurate wage statements, failure to reimburse for necessary business expenses, as  
 2 well as failing to maintain accurate records are also violations of California law.  
 3 CVS has therefore engaged in unlawful business practices pursuant to Bus. & Prof.  
 4 Code § 17200.

5 Unfair

6 153. CVS's practice of minimizing available work hours and staff, as well as  
 7 requiring pharmacy employees to work off the clock is an inherently unfair practice  
 8 because it knowingly prohibits pharmacy employees from being compensated for all  
 9 hours worked.

10 154. CVS's practice of failing to provide off-duty meal and rest periods to its  
 11 pharmacy employees, is an unfair practice because it knowingly strips pharmacy  
 12 employees of the rights and protections afforded to them by the Labor Code.

13 155. CVS's practice of failing to pay prompt wages upon termination, failing  
 14 to provide itemized and accurate wage statements, and failing to reimburse for  
 15 necessary business expenses are also unfair practices because such practices are  
 16 contrary to the Labor Code, as well as unethical.

17 Fraudulent

18 156. CVS's practice of providing Plaintiff McNeely and pharmacy  
 19 employees with inaccurate and incomplete wage statements is not only unlawful but  
 20 constitutes a fraudulent business practice under the UCL. This is particularly true as  
 21 Plaintiff McNeely and other pharmacy employees are likely to be, and actually are  
 22 deceived as to their earned wages because they are unable to determine from their  
 23 wage statements whether or not they were paid for all work performed.

24 157. CVS's practice of failing to maintain accurate records is also a  
 25 fraudulent business practice because the lack of records intentionally mislead  
 26 Plaintiff McNeely and other pharmacy employees as to their total hours worked and  
 27 total wages earned.

28

158. As a direct and proximate result of CVS's unlawful, unfair, and fraudulent business practices, Plaintiff McNeely and other current or former pharmacy employees have suffered injury-in-fact and have lost wages rightfully owed to them.

159. Through their unlawful, unfair, and fraudulent conduct, CVS has been unjustly enriched by receiving and continuing to receive benefits and profits at the expense of pharmacy employees. Therefore, pursuant to Bus. & Prof. Code § 17200, CVS should be enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff McNeely and other current or former pharmacy employees the wages wrongfully withheld from them.

160. The unlawful, unfair, and fraudulent conduct alleged herein has continued, and there is no indication that CVS will refrain from such activity in the future. This is especially true since CVS has purposefully created an atmosphere that deters the accurate reporting of work time. Plaintiff McNeely believes and alleges that if CVS is not enjoined from the conduct described herein, they will continue to violate California law at the expense of its pharmacy employees. Accordingly, Plaintiff McNeely requests that the Court issue a preliminary and permanent injunction against CVS.

161. Plaintiff McNeely, on behalf of herself and other current or former  
pharmacy employees, also request further relief as described in the below prayer.

## **NINTH CAUSE OF ACTION**

**(By Plaintiffs Cabrera and Telahun in their Representative Capacity against  
Defendants and Does 1-10)**

## **PRIVATE ATTORNEY GENERAL ACT OF 2004**

### **(Labor Code §§ 2698 *et seq.*)**

162. Plaintiffs Cabrera and Telahun reallege and incorporate by this reference, all paragraphs of this SAC, the First Amended Complaint filed on September 5, 2017, and the Complaint filed on August 3, 2017.

1       163. The Private Attorneys General Act of 2004 (“PAGA”) expressly  
2 provides that any provision of the Labor Code allowing for a civil penalty to be  
3 assessed and collected by the Labor and Workforce Development Agency  
4 (“LWDA”), or any of its departments, division, commissions, boards, agencies, or  
5 employees, for a violation of the Labor Code may be recovered through a civil  
6 action brought by an aggrieved employee on behalf of himself or herself, and other  
7 current or former employees. These civil penalties are in addition to any other relief  
8 available under the Labor Code, and pursuant to Labor Code § 2699(i), must be  
9 allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to  
10 the aggrieved employees.

11       164. During all, or a portion of, the one-year period before Plaintiffs Cabrera  
12 and Telahun filed notice of their claims with the LWDA. Plaintiffs Cabrera and  
13 Telahun and each of the other current or former employees they represent were  
14 employed by Defendants in the state of California.

15       165. Plaintiff Cabrera, Plaintiff Telahun and other current or former  
16 pharmacy employees are “aggrieved employees” under PAGA, as they were  
17 employed by Defendants within the past year and suffered one or more violations of  
18 the Labor Code.

19       166. Plaintiffs Cabrera and Telahun have complied with the notice  
20 requirements outlined in Labor Code § 2699.3. On June 22, 2016, Plaintiff Cabrera  
21 submitted notice to the LWDA and Defendants informing them of CVS’s alleged  
22 Labor Code violations pursuant to PAGA. *See Exhibit 1.* The LWDA had until  
23 August 28, 2017 to provide notice of whether it intended to investigate the alleged  
24 violations. As of the date of this SAC, the LWDA has not provided notice of  
25 whether it intends to investigate the alleged violations. Therefore, pursuant to Labor  
26 Code § 2699.3, Plaintiff Cabrera has the right to, and does seek to pursue his claims  
27 under PAGA in a representative capacity.

28

1       167. On August 22, 2017, Plaintiffs Cabrera and Telahun submitted an  
 2 amended notice which included Mr. Telahun as an additional representative and  
 3 included additional facts and theories to support the alleged Labor Code violations,  
 4 to the LWDA. *See Exhibit 2.* The LWDA has 65 days from the date of submission to  
 5 notify the parties whether it intends to investigate. As of the date of this SAC, the  
 6 LWDA has not provided notice of whether it intends to investigate the alleged  
 7 violations. Therefore, pursuant to Labor Code § 2699.3, Plaintiffs Cabrera and  
 8 Telahun have the right to, and do seek to pursue their claims under PAGA in a  
 9 representative capacity.

10       168. As set forth herein, CVS has committed, and continues to commit,  
 11 numerous violations for which the Labor Code entitles Plaintiffs Cabrera and  
 12 Telahun, in their representative capacity, to recover, on behalf of themselves and all  
 13 other current or former employees, and the general public, attorneys' fees and costs,  
 14 as well as statutory penalties against CVS for its Labor Code violations.

15       169. Plaintiffs Cabrera and Telahun, in their representative capacity, seek to  
 16 recover civil penalties pursuant to PAGA for violations of the following Labor Code  
 17 provisions for the reasons described herein:

- 18               (a) Failure to pay minimum wages and overtime compensation in  
                      violation of Labor Code §§ 204, 510, 1194, 1197, 1197.1, and  
                      1198 and relevant IWC Wage Orders;
- 19               (b) Failure to provide legally compliant meal periods or  
                      compensation in lieu thereof in violation of Labor Code §§ 226.7  
                      and 512 and relevant IWC Wage Orders;
- 20               (c) Failure to provide legally compliant rest periods or compensation  
                      in lieu thereof in violation of Labor Code § 226.7 and relevant  
                      IWC Wage Orders;
- 21               (d) Failure to pay wages owed in violation of Labor Code §§ 201 –  
                      203;

- (e) Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3 and relevant IWC Wage Orders;
  - (f) Failure to maintain accurate records in violation of Labor Code §§ 226, 226.3, and 1174 and relevant IWC Wage Orders;
  - (g) Failure to reimburse for necessary work expenses in violation of Labor Code §§ 2800 and 2802.

7       170. Labor Code § 226.3 imposes a civil penalty of \$250 per pharmacy  
8 employee per violation and \$1,000 per pharmacy employee for each subsequent  
9 violation of Labor Code § 226(a). Therefore, Plaintiff Cabrera, Plaintiff Telahun  
10 and other current or former employees are entitled to and seek the described civil  
11 penalty.

12        171. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period,  
13 per pharmacy employee for initial violation, and \$200 per pay period, per pharmacy  
14 employee for each subsequent violation for all Labor Code provisions for which a  
15 civil penalty is not specifically provided, including Labor Code §§ 201, 202, 203  
16 204, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802.  
17 Plaintiff Cabrera, Plaintiff Telahun and other current or former employees are  
18 entitled to, and therefore seek the above described civil penalty.

19       172. Lastly, Labor Code § 2699(g)(1) provides that an employee who  
20 prevails in a civil action brought pursuant to PAGA shall be entitled to an award of  
21 reasonable attorneys' fees and costs. As such, Plaintiff Cabrera and Plaintiff  
22 Telahun are entitled to and therefore seeks attorneys' fees and costs.

23       173. Plaintiffs Cabrera and Telahun, in their representative capacity, request  
24 further relief as described in the below prayer.

25 // /

26 // /

27 // /

28 // /

## **PRAYER FOR RELIEF**

Plaintiffs, in their respective capacities, pray for judgment against Defendants as follows:

1. For an order determining that this action may be maintained as a class action with Plaintiff McNeely as the class representatives;
  2. For the attorneys appearing on the above caption to be named class counsel;
  3. For an order determining that this action may be maintained as a representative action with Plaintiffs Cabrera and Telahun as the representatives;
  4. For all minimum wages and overtime compensation owed pursuant to Labor Code §§ 510, 1194, 1197.1, and/or other applicable law;
  5. For premium wages, pursuant to Labor Code § 226.7 and/or other applicable law;
  6. For waiting time penalties pursuant to Labor Code § 203 and/or other applicable law;
  7. For damages, pursuant to Labor Code § 226 and/or other applicable law;
  8. For unreimbursed business expenses, pursuant to Labor Code §§ 2800 and 2802 and/or other applicable law;
  9. For all liquidated damages, pursuant to Labor Code §§ 226(e), 1194.4(a), 1197.1, and/or other applicable law;
  10. For civil penalties, pursuant to Labor Code §§ 558, 1197.1, and/or other applicable law;
  11. For PAGA civil penalties pursuant to Labor Code §§ 2698 *et seq.*;
  12. For injunctive relief, pursuant to Labor Code § 266(h), Bus. & Prof. Code § 17203, and/or other applicable law;

13. For restitution for Defendants' unfair, unlawful, and fraudulent business practices;
  14. For reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 266(e)(1), 2699(g), 1194, and/or other applicable law;
  15. For pre-judgment and post-judgment interest as provided by California law;
  16. For appropriate equitable relief; and
  17. For all such other and further relief, the Court may deem just and proper.

Dated: March 19, 2018

CLARK LAW GROUP

By: /s/ R. Craig Clark  
R. Craig Clark  
Monique R. Rodriguez  
*Attorneys for Plaintiffs*

## **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: March 19, 2018

## **CLARK LAW GROUP**

By: /s/ R. Craig Clark  
R. Craig Clark  
Monique R. Rodriguez  
Attorneys for Plaintiffs

## **DECLARATION OF SERVICE**

*Sigfredo Cabrera & Enko Telahun v. CVS Rx Services, Inc. et al.*

United States District Court, Northern District of California, Case No. 3:17-cv-05803-WHA

I am employed in the county of San Diego, state of California. I am over the age of 18 and not a party to this action. My business address is 205 West Date Street, San Diego, CA 92101. On March 19, 2018, I served the document(s) described as:

## **1. Second Amended Complaint.**

On the following interested parties and in the manner as follows:

Tyler R. Andrews  
GREENBERG TRAURIG, LLP  
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*Attorneys for Defendants*

- BY ELECTRONIC ACCESS:** pursuant to Local Rule 5-1, I hereby certify that the above documents were uploaded to the ECF website and will be posted on the Website by the close of the next business day and the webmaster will give e-mail notification to all parties.
  - BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
  - BY OVERNIGHT DELIVERY:** by enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on March 19, 2018, at San Diego, California.

Alorriño  
Andrea Gorriño